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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/985,691	11/05/2001	Larry Puckeridge	P 282594 P66US2	4006
23117	7590	07/30/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			DAWSON, GLENN K	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/985,691

**Applicant(s)**PUCKERIDGE, LARRY *OK***Examiner**

Glenn K Dawson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15-25,33-37,43,44 and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodring, et al-'449 in view of Anderson-4501937.

Woodring discloses a CPAP device having a housing A an air supply system 12, 1<sup>st</sup> and 2<sup>nd</sup> input devices 22,160,170,172,174,176,226,228 and associated displays and controller 168,31. By pushing the input devices the device changes the mode of operation-see col. 3 lines 6-16.

Woodring discloses the invention as claimed with the exception of the displays being on the buttons; and the two displays displaying the pressure.

Anderson discloses pushbuttons for control circuits with integral displays. It would have been obvious to have employed the use of Anderson's pushbuttons for the mode and setting buttons of Woodring as this would make the device more compact as additional displays would not be necessary or could be much smaller due to the buttons ability to display operating information themselves. The controller would therefore be programmed to cause the displays on the buttons to light up in the appropriate manner to properly convey information regarding the mode that the button and therefore the CPAP device is in.

Claims 15-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Servideo-'838 in view of Anderson-4501937

Servidio discloses a CPAP device having a housing 16, air supply system- 192,250,252,254,150,256,258; a 1<sup>st</sup> input device 29,30,39, a 2<sup>nd</sup> input device 36,37,39 having 1<sup>st</sup> and 2<sup>nd</sup> character displays 28,34,40; and a controller 16. By pushing or actuating the input devices, the CPAP device is movable between various modes of operation consistent with applicant's claimed modes- see col.5 lines 5-56.

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Servidio discloses the invention as claimed with the exception of the displays being on the buttons; the reference characters being alphabetical characters, the incremental increase/decrease of the pressure, and the two displays displaying the pressure.

Anderson discloses pushbuttons for control circuits with integral displays. The displays may be multi-character alphanumeric displays. It would have been obvious to have employed the use of Anderson's pushbuttons for the mode and setting buttons of Servidio as this would make the device more compact as additional displays would not be necessary or could be much smaller due to the buttons ability to display operating information themselves.

Making the rotary knobs 39 incremental pushbuttons with displays would have been obvious as one skilled in the art would recognize that a rotary increment of a knob and a digital increment by button are well-known alternative expedients.

The controller would therefore be programmed to cause the displays on the buttons to light up in the appropriate manner to properly convey information regarding the mode that the button and therefore the CPAP device is in.

### ***Response to Arguments***

Applicant's arguments filed 04-26-04 have been fully considered but they are not persuasive.

Once it is found obvious to incorporate the pushbuttons with integral displays on the CPAP devices, doing so would require the controller to be programmed to cause the

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displays on the buttons to light up with the appropriate information to properly convey the mode that the CPAP device is in.

It should also be pointed out that the claimed modes being limited to a group including normal mode, patient hours mode, pressure set mode and pressure calibrate mode is an open-ended group; that is to say that the group could include modes not listed due to the "including" language being used instead of "consisting of" language.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, McDermott or Shaver can be reached on 703-308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
28 July 2004